Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

# in the Supreme Court of the United States

**OCTOBER TERM, 1975**

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**CASE NO. 75-555**

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COURT REPORTERS OF DADE COUNTY,
*Petitioner,*

*vs.*

HONORABLE CIRCUIT JUDGES FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
*Respondent.*

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## PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

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MIAMI REVIEW — 371-4853 — 377-3721

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# in the Supreme Court of the United States

**OCTOBER TERM, 1975**

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**CASE NO. _____**

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COURT REPORTERS OF DADE COUNTY,
*Petitioner,*

*vs.*

HONORABLE CIRCUIT JUDGES FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
*Respondent.*

---

**PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA**

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## A.

## OPINIONS BELOW

The petitioner, Court Reporters of Dade County, seeks a writ of certiorari to review the judgments and decisions of the Supreme Court of Florida in the case of Court Reporters of Dade County, Appellant, v. Honorable Circuit Court Judges for the Eleventh Judicial Circuit in and for Dade County, Florida, Appellees, Fla. 1975, 314 So.2d 782 [Florida Supreme Court Case 46,762; App. E]; and Court Reporters of Dade County, Petitioner, v. Honorable Circuit Judges for the Eleventh Judicial Circuit in and for Dade, County, Florida, Respondents, Fla. 1975, 314 So.2d 782 [Fla. Supreme Court Case No. 46,740; App. F]. In the first mentioned decision, the Florida Supreme Court dismissed the appeal of the Court Reporters of Dade County who were seeking a review of a decision of the Third District Court of Appeal (Fla.App. 304 So.2d 549; App. L) and in the second decision, the Supreme Court denied a petition for a writ of certiorari, pursuant to which the Court Reporters also sought review of the same decision of the Third District Court of Appeal.

The Court Reporters of Dade County, the Petitioner here, seek review and reversal of the decisions of the Supreme Court of Florida. The decisions effectively have denied review of the order of the Third District Court of Appeal. The Supreme Court dismissed the appeal [for apparent absence of a constitutional question]; and denied petitioner review through certiorari under state practice. The petitioner here seeks reversal and quashal of the Supreme Court denials of review, and ultimately reversal of the decision of the Third District Court of Appeal,



State of Florida, which had denied a petition for certiorari to review General Order No. 5 of the Circuit Court Judges of the Eleventh Judicial Circuit in and for Dade County, Florida. That order regulates payment and fees for Court Reporters services performed in all civil and criminal cases, "including depositions," in the Circuit Court of the Eleventh Judicial Circuit in the County of Dade (App. Q.).

Copies of the following decisions, opinions and proceedings are appended hereto:

Appendix A—Order of the Supreme Court of Florida dated July 17, 1975, in Case No. 46,762, denying Petition for Rehearing of Court Reporters, addressed to dismissal of appeal for lack of jurisdiction.

Appendix B—Order of Supreme Court of Florida, dated July 17, 1975, in Case No. 46,740, denying Petition of Court Reporters for rehearing addressed to Order of Supreme Court denying Petiiton for a Writ of Certiorari.

Appendix C—Petition for a Rehearing of Court Reporters of Dade County addressed to order dismissing the appeal, in Case No. 46,762.

Appendix D—Petition for Rehearing of Court Reporters, in Case No. 46,740, addressed to Order of Supreme Court of Florida denying Petition for Writ of Certiorari.

Appendix E—Order of Supreme Court of Florida, dated May 29, 1975, in Case No. 46,762, dismiss-

ing appeal of Court Reporters, for lack of jurisdiction. (Reported at 314 So.2d 782.)

Appendix F—Order of Supreme Court of Florida, bearing date May 29, 1975, in Case No. 46,740, denying Petition of Court Reporters of Dade County for a Writ of Certiorari. (Reported at 314 So.2d 782.)

Appendix G—Notice of Appeal of Court Reporters, seeking review in Supreme Court of Florida of Order of Third District Court of Appeal denying Petition for a Writ of Certiorari to Review General Order 5 of Honorable Circuit Judges for Eleventh Judicial Circuit in and for Dade County, Florida.

Appendix H—Assignments of Error on appeal by Court Reporters of Dade County to Supreme Court of Florida, from Order of Third District Court of Appeal denying Petition for Writ of Certiorari to Review General Order No. 5.

Appendix I—Petition for a Writ of Certiorari filed in Supreme Court of Florida, seeking review of the decision of District Court of Appeal of Florida, Third District, denying the Petition for Writ of Certiorari to Review General Order No. 5 of Circuit Judges.

Appendix J—Order of Third District Court of Appeal, denying Petition for Rehearing of its Order denying Petition for Writ of Certiorari to Review General Order No. 5.



Appendix K—Petition of Court Reporters of Dade County, for Rehearing of Decision of Third District Court of Appeal.

Appendix L—Order of Third District Court of Appeal denying Petition for Writ of Certiorari to review General Order No. 5 of Honorable Circuit Judges of the Eleventh Judicial Circuit in and for Dade County, Florida. (Reported at 304 So. 2d 549.)

Appendix M—Order of Third District Court of Appeal treating Court Reporters suggestion for a Writ of Prohibition and Appeal by Court Reporters as Petition for Certiorari.

Appendix N—Suggestion for Writ of Prohibition filed in District Court of Appeal, Third District, seeking review of General Order No. 5 of Honorable Circuit Court Judges.

Appendix O—Notice of Appeal, seeking review of General Order No. 5 of Circuit Court of the Eleventh Judicial Circuit.

Appendix P—Assignments of Error on Appeal to the Third District Court of Appeal from General Order No. 5.

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## B.

## GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED

The decisions, opinion and judgment, of the Florida Supreme Court, denying appellate review of the order of the Third District Court of Appeal, were dated May 29, 1975 (Appendix E; F). Petitions for Rehearing (Appendix C; D) were denied by Orders dated July 17, 1975 (Appendix A, B). Jurisdiction is invoked pursuant to 28 U.S.C., §1257(3); and 28 U.S.C. §2101(c); and Supreme Court of the United States, Revised Rules, effective July 1, 1970, Rule 19(1)(a); Rule 21; Rule 22(3).

## C.

## QUESTION PRESENTED FOR REVIEW ON MERITS

WHETHER SUPREME COURT OF FLORIDA COULD PROMULGATE A RULE AUTHORIZING THE CIRCUIT JUDGES OF THE ELEVENTH JUDICIAL CIRCUIT TO ENTER AND RECORD A GENERAL ORDER REGULATING COURT REPORTERS FEES FOR DEPOSITIONS, AND COPIES THEREOF, AND WHETHER THE CIRCUIT JUDGES CONSTITUTIONALLY COULD PROMULGATE SUCH A GENERAL ORDER; OR WHETHER SUCH RULES AND ORDERS AND REGULATIONS OF COURT REPORTERS FEES, EVEN FOR DEPOSITIONS NOT FILED IN COURT OR USED AT TRIAL,



AND PRIVATELY ORDERED COPIES, VIOLATE THE RIGHTS OF THE COURT REPORTERS TO DUE PROCESS OF LAW UNDER (a) DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION, AMENDMENT 14, and (b) THE EQUAL PROTECTION OF THE LAW CLAUSE OF THE UNITED STATES CONSTITUTION, AMENDMENT 14.

## D.

## STATUTES AND CONSTITUTIONAL PROVISIONS AND REGULATIONS INVOLVED

Amendment XIV, United States Constitution:

> Section 1. . . . "No State shall make or enforce any law which shall abridge the provileges or immunities of citizens of the United States; not shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 1.035, FLORIDA RULES OF CIVIL PROCEDURE, provides:

> *"Rule 1.035, Court Reporter*
>
> (a) *When Required.* Proceedings shall be reported on the request of any party. He shall be responsible for payment of the reporter. The

court may order the proceedings reported. Otherwise, reporting of any proceeding shall not be required.

(b) *Fees.* The judges of a circuit court by majority vote may set the fees to be charged by court reporters by general order. The order shall be uniform in all courts throughout the territorial jurisdiction of the circuit court and shall be recorded.

(c) *Record.* When proceedings are being reported, no part of the proceedings shall be taken without being reported unless all of the parties agree to do so and the court approves the agreement.

(d) *Transcripts.* The court may specify the form size, spacing and method of typing transcripts of proceedings by general order. The order shall be recorded." [Effective Dec. 13, 1971, as amended, effective Jan. 1, 1973; 265 So.2d 21; 253 So.2d 404].

Rule 3.025, *Florida Rules of Criminal Procedure,* in pertinent part provides:

"(c) *Court Reporters.* The fees to be allowed court reporters shall be in the amounts as provided by Rule 1.035, Florida Rules of Civil Procedure."



## E.

## STATEMENT OF THE CASE

*I. Proceedings before Circuit Judges of the Eleventh Judicial Circuit.*[1]

a. On March 19, 1974, by General Order No. 4, the Circuit Judges of Dade County, sought to control the rates and fees of court reporters for depositions, taken out of the courtroom. (App. 5). Unexplainably, General Order No. 4 had lowered all rates for court reporters—for transcripts of court proceedings—as well; and extreme concern and anxiety amongst the court reporters resulted.

b. On March 27, 1974, numerous court reporters, on behalf of other court reporters and themselves, filed a petition to modify General Order No. 4. The Circuit Judges, acting through the chief judge thereupon appointed the Honorable Darrey A. Davis as Commissioner to take testimony and evidence upon proper notice at a public hearing to determine whether General Order No. 4 should be modified. The Commissioner was specifically directed to take testimony concerning court reporters' income, profits, costs, expenses and economic factors. Public hearings thereafter were held on April 26, 1974 and May 3, 1974 before the Commissioner, and he thereupon entered his report upon the testimony taken, making certain recommendations and proposals (App. R).

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[1]T. Reference to Conformed Transcript of Proceedings filed in the Supreme Court of Florida; actual record, including full testimonial transcript, in complete form, remains in Third District Court of Appeal. App. Appendix to this Petition.

Conspicuous by its absence in the proposals was any recommendation whatsoever with regard to depositions nor were there any findings that attendance fees and rates for depositions and indeed copies, as generally charged, were excessive, or that they impaired or adversely affected judicial proceedings.

c. Based thereupon, after the extensive report of the Commissioner, the Circuit Judges for Dade County indeed amended General Order No. 4 and adjusted *upward* the fees in General Order No. 5, but again included the words "including depositions" (App. Q) just as General Order No. 4 had.

d. The hearing record shows that at the hearing before the Commissioner, a differentiation was made between depositions and courtroom hearings; and the face of the Commissioner's report made no recommendations whatsoever for depositions. This was so because of obvious features of depositions. Private agreements between litigants and their counsel and court reporters for fees for typing of depositions and copies are not the subject of court adjustment, and regulations are simply an infringement upon the free enterprise system.[2]

[2]As a matter of fact, court reporters consider reporting and typing of depositions the same as freelance reporting. Their reasonable profits are not bottomed on *court* reporting to any degree but rather on deposition work and freelance reporting. This is reflected in the record by the obvious absence of reference to deposition regulation or deposition copy regulation in the report of the Commissioner, who saw fit to recommend modification of General Order No. 4 upward even insofar as court proceedings and transcripts were concerned. (C.f. T.27; T.29, T.31).



*II. Appellate Proceedings; Constitutional Issues Raised At Earliest Stage And At All Times Thereafter*

e. In all events, because the court reporters were aggrieved by the order and attempt unconstitutionally to regulate their private enterprise right insofar as out-of-court depositions—which might or might not be filed—were concerned; and because of interference with their constitutional rights, i.e., right of free enterprise, equal protection and due process, insofar as the regulation of fees for attendance and for deposition copies as well as originals were concerned, the court reporters filed an appeal (App. O, P); and a suggestion for a writ of prohibition (App. N), challenging at the earliest opportunity, the constitutionality of General Order 5 deposition regulation. The Third District Court of Appeal treated the suggestion for a writ of prohibition as a petition for a writ of certiorari and consolidated the direct appeal with the certiorari petition. (No. 74-1143). Procedurally, under Florida law, application for such a petition was the only method to secure review of such an order. (App. M). Oral argument was had and the Third District Court of Appeal simply denied per curiam the petition for a writ of certiorari to review General Order No. 5 (App.L).

f. Upon denial of the petition for rehearing in the Third District Court of Appeal of Florida (App. J. K), the court reporters then filed a petition in the Florida Supreme Court for a Writ of Certiorari, seeking review of the decision of the Third District which confirmed General Order No. 5. Under the peculiar aspects of the Florida law, jurisdiction in the Supreme Court could be obtained only by showing a conflict of Florida appellate decisions on the same points of law. We attempted to do this to exhaust our

state remedies and to insure that every avenue of review fully was explored (App. I). Even in that petition, limited to an attempt to show conflict jurisdiction, we raised our claim of breach of the United States Constitution with particularity (App. I). Similarly, we filed a Notice of Appeal to the Florida Supreme Court. Under Florida appellate procedure, a direct appeal to the Supreme Court is allowed automatically, when the decision of the District Court of Appeal initially construes a controlling provision or provisions of the Federal Constitution (App. G, H). We specifically asserted in our appeal and in our assignments of error, our contention that General Order No. 5 violated the United States Constitution, Amendments 5 and 14, and urged that the Third District Court of Appeal, in denying the petition for certiorari, initially construed the due process clauses of the Federal Constitution and the equal protection clause (Amendment 5; Amendment 14). (App. G, H).

g. As indicated, the Florida Supreme Court determined that it had no jurisdiction, under Florida Appellate Procedure, to review the matter by direct appeal; and denied the petition for certiorari (App. E, F). We petitioned for rehearing again advancing our constitutional arguments (App. C, App. D), but the petitions were denied (App. A, App. B). The effect of the decisions of the Supreme Court that there was no jurisdiction for review in that court, and the effect of the denial of the petition for a writ of certiorari by the Third District Court of Appeal, has been to allow promulgation of a rule which we claim violates the United States Constitution, and appellate review has been denied by the Florida Supreme Court. In dismissal of the appeal, the Court of necessity found no constitutional interpretation was made.



F.

## REASONS FOR ALLOWING THE WRIT — RULE 19

There is no basis for regulating fees of court reporters for attendance at, and transcriptions of, depositions, including copies thereof. The fees are set pursuant to agreement between private litigants and counsel on the one hand and the court reporters on the other. There is no more basis for this regulation than there is for regulation of any public stenographer for taking down any statement out of court; or for regulating prices of paper to be used in depositions just because they may (or may not be) filed. In ruling as it did, the Florida Supreme Court (and the Third District Court of Appeal) actually entered orders which approved deprivation of rights of the court reporters to equal protection of the laws and due process of law in their right to reward for their industry, under the United States Constitution as interpreted in prior decisions of this court.

There of course was state involvement here through the Circuit Court, which promulgated an order in a matter of private enterprise, obstensibly through the authority of the Florida Rules of Civil Procedure promulgated by the Florida Supreme Court (Florida Rules of Civil Procedure 1.035; Rule 3.025); and through what amounts to Florida Appellate approval of the order. Of course nothing in the Rules (1.035; 3.025) mentions depositions, much less attendance or depositions not filed in court, or copies. In all events, state action here is involved without question, for purposes of equal protection consideration under the 14th Amendment: *Shelley v. Kraemer, Mich. & Mo.*, 334 U.S. 1, 168 S.Ct. 836 (1948); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 92 S.Ct. 1965 (1972).

Here, the classification of court reporters, for regulation, was discriminatory and arbitrary in both a horizontal and vertical sense. Within the class, court reporters who type sworn and unsworn statements and affidavits not embodied in depositions, may still charge what they choose; so may private stenographers. Thus, within the class of "reporters" themselves, there is an invidious and arbitrary discrimination—because only official court reporters taking depositions are regulated in their fees, for attendance and transcription.

Similarly, court reporters have been selected for regulation, as opposed to the people who manufacture the paper for the depositions and a myriad of other persons involved in the process, including for example, typewriter dealers or paper sellers—all who have a hand in the preparation of depositions for filing, or for that matter not for filing, and the copies thereof.

Classification is discriminatory, arbitrary and capricious. Certainly attendance and deposition *copies* ordered by private agreement between counsel or parties, and a court reporter are not a subject for control by the court and a regulation thus singling out and so regulating court reporters is not constitutionally allowable. The same certainly may be said insofar as the order seeks to regulate fees for depositions not to be filed in the court.

Nor is there *any* indication that the legislative classification here is reasonably or rationally related to a legitimate state interest. There was no showing, and could be none, that deposition fees and attendance fees were causing *any* hardship or impairment of judicial proceedings; and certainly, privately ordered copies have no possible



rational connection with any state interest. And since the regulation touches upon a matter of fundamental interest —the right to work in a free enterprise system and to be compensated for that work pursuant to a reasonable private contract (with no demonstrable state interest); the rational relationship standard becomes relatively strict. Indeed, a higher degree of scrutiny is required. Recent decisions of this court teach that in a case like this, the test calls for a serious and genuine judicial inquiry into the correspondence between the classification and the legislative goals, see *Shapiro v. Thompson*, 394 U.S. 618, 655, 89 S.Ct. 1322; *U.S. Department of Agriculture v. Moreno*, 413 U.S. 528, 93 S.Ct. 2821 (1973); *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 92 S.Ct. 1400 (1972); *Eisenstadt v. Baird*, 405 U.S. 438, 92 S.Ct. 1029 (1972); *Mayer v. Chicago*, 404 U.S. 189, 92 S.Ct. 410 (1971); *Reed v. Reed*, 404 U.S. 71, 92 S.Ct. 251 (1971). No offsetting state interest appears in the record or order. Under the test of strict scrutiny, deposition fee regulation should, of course, be held unconstitutional (see discussions in *Dorrough v. Estelle*, 5 Cir. 1974, 497 F.2d 1007 and many cases cited; *Salyer Land Co. v. Tulare Lake Basin*, 410 U.S. 719; 93 S.Ct. 1224 (1973)). The deprivation of equal protection here resulted in the deprivation of due process of law because of the arbitrary discrimination. The classification is "suspect". Close scrutiny is required. Application of *Griffiths*, 413 U.S. 718, 83 S.Ct. 2851 (1973). Most assuredly the 14th Amendment was violated by the order, even under the national correction test.

## G.

## CONCLUSION

The Petition for a Writ of Certiorari should be granted, and the decisions and judgments of the Florida Supreme Court (and the Third District Court of Appeal) should be quashed and reversed with directions to set aside those portions of General Order No. 5 which purport to regulate court reporters fees for depositions and for attendance thereat. This *certainly is so at least* insofar as the decisions and order below approve regulation of fees for depositions not to be filed in court, and for deposition copies prepared by the court reporters on private agreements between court reporters and their customers.

Respectfully submitted,

PODHURST, ORSECK &
PARKS, P.A.

By _____
ROBERT ORSECK



## H.

## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that three true copies of the foregoing Petition for a Writ of Certiorari and Appendix has been mailed to the Dade County Attorney, Stuart Simon, 1626 Dade County Courthouse, Miami, Florida 33130, and three copies to Alan T. Dimond, Esquire, Greenberg, Traurig, Hoffman, Lipoff & Quentel, 1401 Brickell Avenue, Miami, Florida, this ____ day of October, 1975, in accordance with Rule 33 of this Court.

ROBERT ORSECK and
PODHURST, ORSECK &
PARKS, P.A.
1201 City National Bank Building
25 West Flagler Street
Miami, Florida 33130

By _____
ROBERT ORSECK

# APPENDIX

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**APPENDIX A**

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1975

THURSDAY, JULY 17, 1975

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CASE NO. 46,762
DCA 3 74-1130
74-1143

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COURT REPORTERS OF DADE COUNTY,
Appellant,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Appellees.

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[FILED JULY 21, 1975]

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On consideration of the Petition for Rehearing filed by attorneys for appellant and responses thereto.

IT IS ORDERED that said petition is denied.

ADKINS, C.J., ROBERTS, BOYD, OVERTON AND ENGLAND, JJ., CONCUR

## APPENDIX B

IN THE SUPREME COURT OF FLORIDA
JULY TERM, A. D. 1975

THURSDAY, JULY 17, 1975

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CASE NO. 46,740
DCA 3 74-1130
74-1143

---

COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Respondents.

On consideration of the Petition for Rehearing filed by attorneys for petitioner and responses thereto,

IT IS ORDERED that said petition is denied.

ADKINS, C.J., ROBERTS, BOYD, OVERTON AND ENGLAND, JJ., CONCUR



## APPENDIX C

IN THE SUPREME COURT OF FLORIDA

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NO. 46,762

---

COURT REPORTERS OF DADE COUNTY,
Appellant,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Appellees.

### PETITION FOR REHEARING

COMES NOW the appellant, COURT REPORTERS OF DADE COUNTY, through undersigned counsel, and respectfully files this, its petition for rehearing of the order and decision of this Court, bearing date May 29, 1975, which dismissed the appeal herein, sua sponte, upon the grounds that the Court was without jurisdiction, and as grounds respectfully states:

1) In dismissing the appeal, this Court, most respectfully, apparently overlooked that a direct appeal from the order of the District Court of Appeal was authorized under the provisions of Article V, §(3)(b) of the Florida Constitution; and Florida Appellate Rule 2.1(a)(5)(b), on

the grounds that the decision of the Third District Court of Appeal initially construed a controlling provision or provisions of the Florida and Federal Constitution.

2) The assignments of error reflect the nature of the constitutional challenge (see assignments 5-16).

3) The Court, in its order, most respectfully, overlooked that of necessity the Third District Court of Appeal initially passed upon and initially construed controlling provisions of the Florida and Federal Constitutions which were directly raised in the certiorari proceeding below, seeking review of the General Order No. 5, promulgated and recorded by The Honorable Circuit Judges For The Eleventh Judicial Circuit In And For Dade County, Fla.

4) This Court apparently overlooked, in its dismissal of the appeal, that of necessity, the Third District Court of Appeal initially construed a controlling provision or provisions of the Florida and Federal Constitution in passing upon the constitutionality of General Order No. 5; and that the Constitutional grounds directly were raised in the Third District Court of Appeal.

WHEREFORE, it is respectfully requested that this petition for rehearing be granted, and that the appeal be reinstated and be permitted to proceed on the merits.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 5th day of June, 1975 to: ALAN T. DIMOND, ESQUIRE, Greenberg, Traurig, et al., 1401



Brickell Avenue, Penthouse One, Miami, Fla. 33131, and to Dade County Attorney, 1626 Dade County Courthouse, Miami, Fla. 33130.

Respectfully submitted,

PODHURST, ORSECK
& PARKS, P.A.
Attorneys for Appellant

BY /s/ Robert Orseck
ROBERT ORSECK

## APPENDIX D

IN THE SUPREME COURT OF FLORIDA

NO. 46,740

COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Respondents.

### PETITION FOR REHEARING

COMES NOW the petitioner, COURT REPORTERS OF DADE COUNTY, through undersigned counsel, and respectfully files this its motion for rehearing of the order and decision of this Court, bearing date May 29, 1975, which denied the petition for a writ of certiorari upon the grounds that the Court was without jurisdiction, and as grounds respectfully asserts:

1) The Court apparently overlooked that the decision and order of the Third District Court of Appeal herein, denying the petition for a writ of certiorari to review General Order No. 5 of The Honorable Circuit Judges For The Eleventh Judicial Circuit In And For Dade County, Florida, was in direct jurisdictional conflict with the prior decision of the Third District Court of Appeal in STATE v. BATTLE, Fla.App.1974, 302 So. 2d 782, which holds that the plain language of the rules



promulgated by the Supreme Court of Florida, are binding upon the trial and appellate courts; and overlooks that nothing in the clear language of Florida Rules of Civil Procedure 1.035; and Florida Rule of Criminal Procedure, 3.025, authorizes adoption by the Circuit Judges of a particular circuit of a rule to regulate fees to be charged by court reporters for originals and copies of depositions. Nothing authorizes adoption of such a rule without regard to whether depositions are filed or not, and despite the private agreement between the litigants and the court reporter.

2) The court, in denying the petition for a writ of certiorari herein, apparently overlooked that the decision of the Third District Court of Appeal, based as it most probably was on the prior decision of the Third District Court of Appeal in REEDUS v. FRIEDMAN, Fla.App. 1973, 287 So.2d 355, misapplied that decision on this point of law. That case never even discussed the regulation of deposition fees; and was and is inapplicable to this case insofar as it was urged below that it supported the order being challenged.

3) The Court, in its order denying petition for writ of certiorari herein on alleged direct conflict grounds, apparently overlooked that the decision of the Third District Court of Appeal was in direct jurisdictional conflict with prior decisions of this Court in GEORGIA SOUTHERN & FLA. RAILWAY CO. v. SEVEN-UP BOTTLING CO. OF SOUTHEAST GEORGIA, Fla.1965, 175 So.2d 39; forbidding on a constitutional basis, arbitrary, unreasonable classifications, such as the classification here; for court reporters may not and cannot be singled out for regulation by courts with regard to their private agree-

ments with litigants and counsel, for fees for depositions, transcribing, and for copies thereof; and thus the decision below was in direct conflict with the SEVEN-UP case which construes that Florida Constitution, and Federal Constitution in such a way as to forbid such unreasonable classifications (see U.S. Constitution, Amendments Five and Fourteen; and Article 1, §9 of the Florida Constitution; and Equal Protection of Law Clauses, Amendment Fourteen, United States Constitution; and Article 1, §2, Florida Constitution; [including provision entitling party to be rewarded for industry and to acquire, possess and protect property].

4) Similarly, the decision herein, denying the petition for a writ of certiorari, apparently overlooks that the decision of the Third District Court of Appeal was likewise in direct conflict with the decision of this Court in DAVIS v. FLORIDA POWER CO., 64 Fla.246, 60 So.759, forbidding unequal protection and arbitrary classifications such as the classification here; accord: O'CONNELL v. KONTOJOHN, Fla.1938, 179 So.802.

5) Similarly, this Court, in its order denying the petition for a writ of certiorari, apparently overlooked that the Third District Court of Appeal, in ruling as it did, apparently construed the rules promulgated by this Court in a dubious constitutional manner—contrary to the edict of this Court set forth in, among other cases, McKIBBEN v. MALLORY, Fla.1974, 293 So.2d 48. McKIBBEN dealt with a statute and here we are considering Court made rules—but the principle is the same; dubious constitutional interpretations should not be indulged.



WHEREFORE it is respectfully requested that the order of May 29, 1975 denying the petition for a writ of certiorari be reheard; and that the Court grant the petition for a writ of certiorari; and proceed to hear the matter on the merits.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 5th day of June, 1975 to: ALAN T. DIMOND, ESQUIRE, Greenberg, Traurig, et al., 1401 Brickell Avenue, Penthouse One, Miami, Fla. 33131, and to Dade County Attorney, 1626 Dade County Courthouse, Miami, Fla. 33130.

Respectfully submitted,

PODHURST, ORSECK
& PARKS, P.A.
Attorneys for Petitioner

BY /s/ Robert Orseck
ROBERT ORSECK

## APPENDIX E

IN THE SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1975

THURSDAY, MAY 29, 1975

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CASE NO. 46,762
DISTRICT COURT OF APPEAL,
THIRD DISTRICT
74-1130
74-1143

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COURT REPORTERS OF DADE COUNTY,
Appellant,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Appellees.

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[FILED JUNE 2, 1975]

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The Court having determined that it is without jurisdiction, it is ordered that this case be and is hereby dismissed, sua sponte.

ADKINS, C.J., ROBERTS, BOYD, OVERTON
AND ENGLAND, JJ., CONCUR



## APPENDIX F

SUPREME COURT OF FLORIDA
JANUARY TERM, A. D. 1975

THURSDAY, MAY 29, 1975

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CASE NO. 46,740
DISTRICT COURT OF APPEAL,
THIRD DISTRICT
74-1130
74-1143

---

COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Respondents.

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdiction briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

ADKINS, C.J., ROBERTS, BOYD, OVERTON
AND ENGLAND, JJ., CONCUR

## APPENDIX G

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

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NOS. 74-1130
74-1143

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COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Respondent.

## NOTICE OF APPEAL

COURT REPORTERS OF DADE COUNTY, Petitioner, take and enter their appeal to the Supreme Court of Florida to review the order and judgment of the District Court of Appeal of Florida, Third District, bearing date the 6th day of November, 1974, and entered and filed on that date, and rendered on the 11th day of December, 1974, when the petition for rehearing was denied and order filed. The nature of the order appealed from is an order denying a petition for a writ of certiorari to review General Order No. 5 promulgated and recorded by the Honorable Circuit Judges for the Eleventh Judicial Circuit In and For Dade County, Florida. All parties to said cause are called upon to take notice of the entry of this appeal.



This direct appeal from an order of the District Court of Appeal is filed pursuant to the provisions of Article 5, §3(b) of the Florida Constitution; and Florida Appellate Rule 2.1a(5)(b) on the grounds that the decision of the Third District initially construed a controlling provision, or provisions, of the Florida and Federal Constitution.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 8th day of January, 1975 to: Alan T. Dimond, Assistant County Attorney, c/o Dade County Attorney, 1626 Dade County Courthouse, Miami, Florida 33130.

Respectfully submitted,

PODHURST, ORSECK
& PARKS, P.A.
Attorneys for Petitioner

BY /s/ Robert Orseck

ROBERT ORSECK

## APPENDIX H

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

---

NOS. 74-1130
74-1143

---

COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Respondent.

## ASSIGNMENTS OF ERROR

COMES NOW the Petitioner, through undersigned counsel, and assigns as error the following, to the relied upon on the direct appeal to the Supreme Court of Florida from the order of the Third District Court of Appeal, entered herein:

1. The Third District Court of Appeal erred in entering its order denying the petition for a writ of certiorari herein.

2. The Third District Court of Appeal erred in denying the petition for rehearing.



3. The Third District Court of Appeal erred in approving General Order No. 5 of the respondent herein, insofar as it allowed regulation of fees of court reporters with regard to depositions and copies thereof.

4. The Third District Court of Appeal erred in approving General Order No. 5 insofar as it regulated court reporters' fees for copies of depositions obtained by litigants and their attorneys.

5. The Third District Court of Appeal erred in approving General Order No. 5, insofar as it regulates fees for court reporters' depositions, because such purported regulation is in violation of the due process clause of the United States Constitution, Amendment Five.

6. The Third District Court of Appeal erred in approving General Order No. 5, insofar as it regulates fees for court reporters' depositions, because such purported regulation is in violation of the due process clause of the United States Constitution, Amendment Fourteen.

7. The Third District Court of Appeal erred in approving General Order No. 5, insofar as it regulates fees for court reporters' depositions, because such purpoted regulation is in violation of the Equal Protection of the Florida Constitution, Article 1, §9.

8. The Third District Court of Appeal erred in approving General Order No. 5, insofa as it regulates fees for court reporters' depositions, because such purported regulations is in violation of the Equal Protection of the Law Clause of the United States Constitution, Amendment Fourteen.

9. The Third District Court of Appeal erred in approving General Order No. 5, insofar as it regulates fees for court reporters' depositions, because such purported regulation is in violation of the Equal Protection of the Law Clause of the Florida Constitution, Article 1, §2.

10. The Third District Court of Appeal erred in approving General Order No. 5, insofar as it regulates fees for court reporters' depositions, because such purported regulation is in violation of the basic rights of persons under the Florida Constitution to be rewarded for industry and to acquire, possess and protect property, Article I, §2 of the Florida Constitution.

11. The Third District Court of Appeal erred in approving and confirming the General Order No. 5 of the respondent insofar as it regulates deposition fees of court reporters because the regulation is arbitrary and unreasonable.

12. The Third District Court of Appeal erred in its interpretation of Article I, §2 of the Florida Constitution which allows persons to be rewarded for industry and to acquire, possess and protect property.

13. The Third District Court of Appeal erred in its construction of the Equal Protection of the Law Clause of the United States Constitution, Amendment Fourteen.

14. The Third District Court of Appeal erred in its construction of the Equal Protection of the Law Clauses of the United States Constitution.



15. The Third District Court of Appeal erred in its construction of the due process clause of the United States Constitution, Amendment Five.

16. The Third District Court of Appeal erred in its construction of the due process clause of the United States Constitution, Amendment Fourteen.

17. The Third District Court of Appeal erred in its construction of the due process clause of the Florida Constitution, Article 1, §9.

18. The Third District Court of Appeal erred in its construction of Florida Rule of Civil Procedure 1.035 and erroneously interpreted the rule so as to allow for regulation by the Circuit Judges of deposition fees.

19. The Third District Court of Appeal erred in its construction of Florida Rule of Criminal Procedure 3.025 and erroneously interpreted the rule so as to allow for regulation by the Circuit Judges of deposition fees.

20. The Third District Court of Appeal erred in construing Florida Rule of Civil Procedure 1.035 in a dubious constitutional matter.

21. The Third District Court of Appeal erred in construing Florida Rule of Criminal Procedure 3.025 in a dubious constitutional matter.

22. The Third District Court of Appeal erred in its construction of F.S.29.03.

23. The Third District Court of Appeal erred in its construction of F.S.29.03 in a dubious constitutional matter.

24. The Third District Court of Appeal erred in its construction of F.S.29.03 so as to allow regulation of deposition fees of court reporters.

25. The Third District Court of Appeal erred in any event in its construction of Rule 1.035 as providing for regulation by the circuit courts of deposition fees.

26. The Third District Court of Appeal erred in any event in its construction of Rule 3.025 as providing for regulation by the circuit courts of deposition fees.

27. The Third District Court of Appeal erred in disregarding the plain language of Florida Rules of Civil Procedure 1.035 which does not provide for regulation of deposition fees.

28. The Third District Court of Appeal erred in disregarding the plain language of Florida Rule of Criminal Procedure 3.025 which does not provide for regulation of deposition fees.

29. The Third District Court of Appeal erred in denying the petition for a writ of certiorari herein, thereby precluding review of the provisions of General Order No. 5 purporting to regulate deposition fees of the court reporters of Dade County.

30. The Third District Court of Appeal erred in denying the petition for rehearing herein, thereby pre-



cluding review of the provisions of General Order No. 5 purporting to regulate deposition fees of the court reporters of Dade County.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 8th day of January, 1975 to: Alan T. Dimond, Assistant County Attorney, c/o Dade County Attorney, 1626 Dade County Courthouse, Miami, Florida 33130.

Respectfully submitted,

PODHURST, ORSECK
& PARKS, P.A.
Attorneys for Petitioner

BY /s/ Robert Orseck
ROBERT ORSECK

## APPENDIX I

IN THE SUPREME COURT OF THE
STATE OF FLORIDA

NO. _____

COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES FOR
THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA,
Respondent.

**PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT**

TO THE SUPREME COURT OF THE
STATE OF FLORIDA:

Petitioner, COURT REPORTERS OF DADE COUNTY, present this their petition for a writ of certiorari and state:

1. Petitioner seeks to have reviewed an order and decision of the District Court of Appeal, Third District, dated the 6th day of November, 1974 and filed in the records of said District Court on that date (T.5)* The

NOTE: All emphasis supplied
T: Conformed transcript of portions of record below, including decision sought to be reviewed.



decision was rendered on December 11, 1974 (T.1) when the petition for rehearing (T.2-4) was denied. The decision was entered in Court Reporters of Dade County, Petitioner, v. Honorable Circuit Judges for the Eleventh Judicial Circuit In And For Dade County, Florida, Respondent, Fla.App. 1974, _____ So.2d _____ [case no. 74-1130; 74-1143; Third District Court of Appeal; T.5; T.1].

2. This petition is presented under and pursuant to Article V, §3 of the Florida Constitution and Rule 4.5(c) of the Florida Appellate Rules.

3. This petition is accompanied by a conformed transcript of a portion of the record proper of the proceedings below, sufficient to demonstrate jurisdiction, including the decision petitioner seeks to have reviewed; together with a motion for extension of time to file a supporting brief.

4. The following are the facts of the case:

a. On March 19, 1974, by General Order No. 5, the Circuit Judges of Dade County, for the first time, sought to control the rates and fees of court reporters for depositions, taken out of the courtroom. Unexplainably, General Order No. 4 also lowered all rates for court reporters — for transcripts of court proceedings — as well; and extreme concern and anxiety amongst the court reporters was the result (T.29-31).

b. On March 27, 1974, numerous court reporters, on behalf of other court reporters and themselves, filed a petition to modify General Order No. 4. The Circuit

Judges, acting through the chief judge, thereupon appointed the Honorable Darrey A. Davis as Commissioner to take testimony and evidence upon proper notice at a public hearing to determine whether General Order No. 4 should be modified. The Commissioner was specifically directly to take testimony concerning court reporter's income, profits, costs, expenses and economic factors. Public hearings thereafter were held on April 26, 1974 and May 3, 1974 before the Commissioner, and he thereupon entered his report upon the testimony taken, making certain recommendations and proposals (T.27-28; T.17-28).

Conspicuous by its absence in the proposals was any recommendation whatsoever with regard to depositions (T.27).

c. Based thereupon, after extensive report of the Commissioner, the Circuit Judges for Dade County indeed amended General Order No. 4 and adjusted upward the fees in General Order No. 5, but again included the words "including depositions" (T.13) just as General Order No. 4 (T.29) had.

d. The record proper — that is, the written record of proceedings below excluding the actual testimony — clearly suggests that at the hearing before the Commissioner, a differentiation was made between depositions and courtroom hearings; because the face of the Commissioner's report made no recommendations whatsoever for depositions. This was so because of obvious features of depositions. Private agreements between lititgants and their counsel and court reporters for fees for typing of



depositions and copies are not the subject of court adjustment, and are simply an infringement upon the free enterprise system.*

e. In all events, because the court reporters were aggrieved with the attempt to regulate their private enterprise right insofar as out-of-court depositions — which might or might not be filled — were concerned; and because of interference with their right of free enterprise insofar as the regulation of fees for deposition copies as well as originals were concerned, the court reporters filed an appeal (T.9-12); and a suggestion for a writ of prohibition (T.7-8). The Third District Court of Appeal treated the suggestion for a writ of prohibition as a petition for a writ of certiorari and consolidated it with the direct appeal (No. 74-1143). Oral argument was had and the Third District Court of Appeal simply denied per curiam the petition for a writ of certiorari to review General Order No. 5.

f. On the foregoing facts, the Third District Court of Appeal was presented with the following point of law:

> A. DOES F.S.29.03; OR THE CONTROLLING RULES PROMULGATED BY THIS COURT, TO WIT: FLORIDA RULE OF CIVIL PROCEDURE 1.035, AND FLORIDA RULE OF

*As a matter of fact, court reporters consider reporting and typing just like they consider freelance reporting. Their reasonable profits are not bottomed on court reporting to any degree but rather on deposition work and freelance reporting. This is reflected in the record proper by the obvious absence of reference to deposition regulation or deposition copy regulation in the report of the Commissioner, who saw fit to recommend modification of General Order No. 4 upward even insofar as court proceedings and transcripts were concerned. C.f. T.27; T.29, T.31.

CRIMMINAL PROCEDURE, 3.025, AUTHORIZE ADOPTION BY A MAJORITY OF THE CIRCUIT JUDGES OF A PARTICULAR CIRCUIT TO REGULATE FEES TO BE CHARGED BY COURT REPORTERS FOR THE ORIGINAL AND COPIES OF DEPOSITIONS, WHETHER THE DEPOSITIONS ARE FILED OR NOT, AND DESPITE THE PRIVATE AGREEMENT BETWEEN THE LITIGANTS AND THE COURT REPORTER?

On this point of law, the District Court of Appeal, Third District, obviously held that the rules promulgated by this Court, with regard to regulation of fees for transcribing testimony and proceedings in civil and criminal cases, authorized regulation of out-of-court deposition fees and copies. Simple resort to the rules, and indeed to F.S. 29.03, itself superseded by the actual rules, shows that neither the Florida Legislature, or this Court, pursuant to its rule-making powers, ever purported to authorize the Circuit Judges to regulate court reporters' fees for depositions. The obvious import of the rules promulgated by this Court in both civil and criminal proceedings is to authorize Circuit Court Judges by general recorded order, to regulate court reporters' fees for actual testimony and proceedings in the courtroom, leaving deposition matters and deposition copies within the ambit of free enterprise.

Nothing in the rules even suggests the promulgation of a rule by this Court passing on to the Circuit Judges the power to so impair private enterprise. In ruling as it did, and denying the petition for a writ of certiorari, the Third District Court of Appeal, [as did the Circuit Judges] interpreted the applicable rules beyond their clear and



unambiguous language — for they refer to "proceedings" subject to regulation of the trial judge; and the rules on their face are not geared to depositions, do not mention depositions, and are totally inapplicable to depositions by their actual clear language and by their nature and import. Despite this, the Third District Court of Appeal interpreted the rules, most respectfully, so as to include depositions.

5. Insofar as the Third District Court of Appeal approved the order of the Dade County Circuit Judges — for whom we have nothing but the highest regard — and construed the rules of this Court so as to authorize regulation of deposition fees, the decision below directly conflicts with the decision of the Third District Court of Appeal in STATE v. BATTLE, Fla.App. 1974, 302 So.2d 782 which squarely holds that

> "The plain language of the rules promulgated by the Supreme Court of Florida are binding upon the trial and appellate courts. See STATE v. LOTT, Fla. 1973, 286 So.2d 565 and SERNESTLER, INC. v. GENERAL FINANCE LOAN CO. OF MIAMI NORTHWEST, Fla.App. 1964, 167 So.2d 230." (302 So.2d at 783; emphasis supplied).

In short, the decision below directly conflicts with the decision forbidding interpretation of a rule promulgated by this Court beyond its clear meaning.

The decision below is in direct jurisdictional conflict with STATE v. LOTT, Fla. 1973, 286 So.2d 565, which holds that rules promulgated by this Court are binding on

litigants and the Courts of this state. Nothing in the rules promulgated by this Court authorizes the trial courts to impair the free enterprise right of court reporters, and private litigants, to enter into agreements with regard to fees for depositions and copies. Direct conflict exists here.

6. On the facts below, the Third District Court of Appeal was presented with the following question:

> DID THE PROMULGATION OF RULE 1.035 (b) FLORIDA RULES OF CIVIL PROCEDURE; AND RULE 3.025, FLORIDA RULES OF CRIMINAL PROCEDURE, IN ANY EVENT AUTHORIZE THE CIRCUIT JUDGES OF DADE COUNTY TO REGULATE FEES FOR DEPOSITIONS AND COPIES?

The Third District Court of Appeal answered this question affirmatively, of necessity.

7. In so ruling, the Third District Court of Appeal decision directly conflicted with the prior decision of the Third District Court of Appeal in REEDUS v. FRIEDMAN; Fla.App. 1973, 287 So.2d 355 on the same point. The direct conflict here is through misapplication of REEDUS. REEDUS, on its face, is concerned with trial proceedings or in court proceedings, as is indicated in the language of the opinion (287 So.2d at 357). No where is the regulation of deposition fees even mentioned.

8. On the foregoing facts, the District Court of Appeal, Third District, was presented with the following point of law:



> IN ANY EVENT, COULD THE SUPREME COURT PROMULGATE A RULE, AUTHORIZING THE CIRCUIT JUDGES OF THE VARIOUS CIRCUITS TO ENTER AND RECORD GENERAL ORDERS REGULATING COURT REPORTERS' FEES FOR DEPOSITIONS AND COPIES THEREOF, OR WOULD SUCH REGULATION VIOLATE THE RIGHTS OF THE COURT REPORTERS TO DUE PROCESS OF LAW UNDER a) THE DUE PROCESS CLAUSES OF THE UNITED STATES CONSTITUTION, AMENDMENT FIVE AND FOURTEEN, AND ARTICLE I, §9 OF THE FLORIDA CONSTITUTION; b) THE EQUAL PROTECTION OF THE LAW CLAUSES OF THE UNITED STATES CONSTITUTION, AMENDMENT FOURTEEN; AND THE FLORIDA CONSTITUTION, ARTICLE I, §2; AND THE BASIC RIGHT OF PERSONS UNDER THE FLORIDA CONSTITUTION, ARTICLE I, §2, TO "BE REWARDED FOR INDUSTRY, AND TO ACQUIRE, POSSESS, AND PROTECT PROPERTY"?

On this point of law, the Third District Court of Appeal of necessity held that the decision thereupon fell into jurisdictional direct conflict with prior decisions on the same point of law. There is no basis for regulating fees of court reporters for transcribing depositions, and copies thereof, pursuant to agreements between private litigants and counsel on the one hand and the reporters on the other. There is no more basis for this regulation than there is the regulation of any public stenographer for taking down any statement out of court; or for regulating

the prices of paper to be used in depositions just because they may or may not be filed. In ruling as it did, the Third District Court of Appeal actually entered an order which deprived the court reporters of equal protection of the law and due process of law in their right to reward for their industry under the United States Constitution and the Florida Constitutions, as interpreted in prior decisions of this Court which conflict with the decision of the Third District Court of Appeal herein.

9. Direct Conflict Exists with prior decision of this Court in GEORGIA SOUTHERN & FLA. RAILWAY CO. v. SEVEN-UP BOTTLING CO. OF SOUTHEAST GA., Fla. 1965, 175 So.2d 39, which holds that the Florida state action may not be employed so as to deprive any person within its jurisdiction of the equal protection of the laws or due process of law through the singling out as a special subject or arbitrary unreasonable classification. Court reporters may not and cannot be singled out for regulation of courts here with regard to their private agreements with litigants and counsel, for fees for deposition transcribing and for copies thereof.

The decision of the Third District Court of Appeal similarly is in direct conflict with the decision of this Court in DAVIS v. FLORIDA POWER CO., 1913, 64 Fla.246, 60 So.759, quoted in the GEORGIA SOUTHERN AND FLA. RAILWAY CO. case, supra, which holds as follows:

> "The inhibition that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person, or class of persons, from being singled out



> as a special subject for arbitrary and unjust discrimination. . ."

Here, the record proper reveals discrimination between court reporters and other participants in the free enterprise system; including, for example, paper dealers, and typewriter dealers, who all have a hand in the preparation of depositions for filing — or for that matter not for filing — and the copies thereof. All such participants in the free enterprise system regulate their own fees on the basis of supply and demand pursuant to the rules of society and our economic system. Moreover, the permissibility of regulation of court reporters' fees for depositions and copies thereof would discriminate unreasonably between court reporters and other public stenographers taking public statements of any kind whether to preserve evidence or not.

Similarly, the decision of the Third District Court of Appeal conflicts with the prior decision of this Court in O'CONNELL v. KONTOJOHN, Fla. 1938, 179 So.802 which forbids constitutionally unreasonable classifications by the state in matters of commerce and trade so as to unfairly discriminate against one class or type of activity as opposed to the other.

10. Finally, on the facts below, the Third District Court of Appeal was called upon to determine the following issue:

> WHETHER A RULE OR ANY FORMAL USE OF STATE POWER SHOULD BE INTERPRETED IN SUCH A MANNER AS TO AVOID CONSTITUTIONAL IMPEDIMENTS?

On this point of law, the Third District Court of Appeal of necessity interpreted the applicable rules promulgated by this Court so as to include regulation of deposition fees and copies thereof within their ambit. As interpreted, the rule is — to say the least — of doubtful constitutional validity.

This Court, in McKIBBEN v. MALLORY, Fla.1974, held that it is a fundamental rule that statutes [here Court made rules] should be construed in the following manner:

> So "that all doubts as to the validity of a statute [court made rule] should be resolved in favor of its constitutionality" (293 So.2d 48, matter in brackets supplied)

In short, General Order No. 5 exceeds the authority conferred upon the Circuit Judges by Florida Rules of Civil Procedure and the Florida Rules of Criminal Procedure and indeed the Florida Statutes; and in any event, if the rules authorized regulations of fees for depositions and copies thereof, they would be unconstitutional — most respectfully — and in any event, construction of the rules so as to authorize regulation of deposition fees, and fees for copies thereof is unwarranted and unnecessary, and the rules should be construed at the very least in such a manner as to remove doubts as to their constitutional validity; and the decision below at least impliedly shows interpretation of the rules contrary to their clear meaning; and the decision of the Third District Court of Appeal, summarily denying the petition for a writ of certiorari herein, thereby foreclosing review of thematter, is in direct conflict with prior decisions of this Court and various District Courts of Appeal in this state on the applicable principles of law.



General Order No. 5, of course, shows action by the Circuit Judges of Dade County, most respectfully, which exceeds jurisdiction; shows a fundamental departure from established principles of law; and shows violation of the constitutional rights of these petitioners. The denial of the petition for a writ of certiorari here directly conflicts with prior decisions of this Court and a District Court of Appeal on the constitutional principles and other principles of law involved.

11. The decision of the District Court of Appeal, Third District, which the petition seeks to have reviewed is in direct conflict with the above-mentioned prior decisions of this Court and the District Court of Appeal, Third District, on the same points of law. Because of the reasons and authorities set forth in this petition, and to be set forth in the petitioners' brief in support thereof, it is believed that the decision hereby sought to be reviewed is erroneous and that the conflicting decisions of this Court and various District Courts of Appeal are correct and should be approved by this Court as the controlling law for the State of Florida.

WHEREFORE, petitioner requests this Court to grant a writ of certiorari and enter its order quashing the decision and order hereby sought to be reviewed, and ordering that the petition for a writ of certiorari directed to review of General Order No. 5 should have been and should be granted; and approving the prior decisions of this Court and various District Courts of Appeal as the correct decision; and quashing the order below which denied the petition for a writ of certiorari directed to General Order No. 5, and ordering that the petition for a writ of certiorari should have been granted, and granting such further relief

as shall seem right and proper to the Court; including a clear-cut and definitive holding that court reporters' fees for depositions and copies thereof are not subject to regulation by the various Circuit Judges; or that in any event, no rule of Court promulgated by this Court has authorized such regulation.

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 7th day of January, 1975 to: Alan T. Dimond, Assistant County Attorney, c/o Dade County Attorney, 1626 Dade County Courthouse, Miami, Fla. 33130.

Respectfully submitted,

PODHURST, ORSECK &
PARKS, P.A.
Attorneys for Petitioners

By: Robert Orseck

ROBERT ORSECK

By: Aaron Podhurst

AARON PODHURST



## APPENDIX J

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1974

WEDNESDAY, DECEMBER 11, 1974

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CASE NOS.
74-1130
74-1143

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COURT REPORTERS OF DADE COUNTY,
Petitioner,

vs.

HONORABLE CIRCUIT JUDGES
for the Eleventh Judicial Circuit
in and for Dade County, Florida,
Respondent.

Counsel for petitioner having filed in this cause petition for rehearing, and same having been considered by the court which determined the cause, it is ordered that said petition be and it is hereby denied.

## APPENDIX K

[TITLE OMITTED]

## PETITION FOR REHEARING OF COURT REPORTERS OF DADE COUNTY

COMES NOW the petitioner, Court Reporters of Dade County, through undersigned counsel, and respectfully file this petition for rehearing of the decision and order of the Court, dated November 6, 1974, denying petition for writ of certiorari, and as grounds respectfully states:

1) In denying the petition, this Court apparently overlooked that nothing in Florida Rules of Civil Procedure 1.035; or Florida Rules of Criminal Procedure, 3.025(c); authorizes the Circuit Judges of a judicial circuit to regulate fees to be charged by court reporters for depositions —as opposed to attendance and transcription of actual court proceedings. A reading of the Rules, promulgated by the Supreme Court, shows inapplicability to depositions.

2) Most respectfully, this Court apparently overlooked therefore, that the Circuit Judges for the Eleventh Judicial Circuit thus exceeded their power, jurisdiction, and constitutional perogatives in promulgating General Order 5 insofar as it concerns regulation of fees for depositions; and a classic case for a writ of certiorari thus is presented.



3) The Court apparently overlooked that the Supreme Court of Florida, within the scope of its rule-making, powers over matters of court practice and procedure, (Article 5, Fla. Const.) did not purport to authorize the various circuits to regulate fees for depositions; and thus the circuit judges of this circuit were without constitutional power to do so. The Court apparently overlooked that REEDUS v. FRIEDMAN, Fla.App. 1973, 287 So.2d 355, does not concern depositions, but only proceedings in court, or at trial, and has no bearing here.

4) The Court apparently overlooked that the commissioner, who presided over the hearings herein, did not include depositions in his recommendations, and there was no justification in the evidence for such an inclusion.

5) The court apparently overlooked that the inclusion of depositions in General Order 5 is violative of the equal protection clauses of the Florida Constitution (Art. 1, §2; all persons are "equal before the 'law'" and are entitled to be "rewarded for industry, and to acquire, possess and protect property") and the Federal Constitution (Amendment 14), and the respective due process clauses of both Constitutions (Fla.Const. Art. 1, §9; U.S. Const., Amendments 5, 14); by singling out court reporters alone, among public stenographers and reporters, in an area of free enterprise, for regulation of fees.

WHEREFORE, the petitioner respectfully requests that the rehearing be granted; the decision and order of this court be set aside and vacated, and the petition for a

writ of certiorari be granted; and the regulation of fees for depositions be eliminated from General Order 5; or that the Court grant such other and further

Respectfully submitted,

PODHURST, ORSECK &
PARKS, P.A.
Attorneys for Petitioners, the
Court Reporters of Dade County
66 West Flagler Street
Miami, Florida 33130

By Aaron Podhurst

AARON PODHURST

Roberte Orseck

ROBERT ORSECK

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 8 day of November, 1974 to the following:

The Honorable Grady L. Crawford
Chief Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

The Honorable Francis J. Christie, Chairman
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida



The Honorable William A. Herin
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

The Honorable Joseph Nesbitt
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

The Honorable Boyce F. Ezell, Jr.
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

Alan T. Dimond, Esquire
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

Darrey A. Davis, Commissioner
McCarthy, Steel, Hector & Davis
First National Bank Building
Miami, Florida

Wilbur McDuff
Court Administrator
Dade County Courthouse
Miami, Florida

By Aaron Podhurst

AARON PODHURST

Robert Orseck

ROBERT ORSECK

## APPENDIX L

[TITLE OMITTED]

This cause having come on for hearing before the court on petition for writ of certiorari, transcript of record and briefs to review the order of the Circuit Court for Dade County, Case No. 74-1, in said cause, bearing date of July 2, 1974 and the record having been considered, it is ordered that said petition be and the same is hereby denied.

## APPENDIX M

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT
JULY TERM, A.D. 1974

FRIDAY, AUGUST 9, 1974

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CASE NO. 74-1130
74-1143

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[Filed Aug. 12, 1974]

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**IN RE: MODIFICATION OF
UNIFORM COURT REPORTING FEES**

Upon consideration of the Suggestion for Writ of Prohibition, brief and record filed in support thereof, it is ordered that said suggestion shall be treated and acted



upon as a petition for writ of certiorari. Counsel for respondent shall file his brief within twenty (20) days from the date of this order.

This court's appeal #74-1143 is hereby consolidated with the above styled petition for certiorari.

## APPENDIX N

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
THIRD DISTRICT

---

NO. _____
Circuit Court Case No. 74-1

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IN RE: MODIFICATION OF
UNIFORM COURT REPORTING FEES

## SUGGESTION FOR A WRIT OF PROHIBITION

The petitioners, the Court Reporters of Dade County, suggest by this Petition and supporting Brief that General Order No. 5, In Re: Modification Of Uniform Court Reporting Fees, issued by the Honorable Circuit Judges for the Eleventh Judicial Circuit In And For Dade County, Florida, in case no. 74-1, a certified copy of which is attached hereto, exceeds the authority of said Honorable Judges for the following reasons:

1) The said General Order No. 5 purports to control schedule of fees for depositions in civil actions in violation of all applicable laws, including the Constitution of the State of Florida and the United States of America.

2) The inclusion of depositions in General Order No. 5 prohibits Court Reporters from making contracts and is, therefore, a violation of their Constitutional rights.



3) The inclusion of depositions in General Order No. 5 exceeds the authority granted to the said Honorable Circuit Judges which authority was given by the Supreme Court of Florida.

4) Under the applicable law, the said Honorable Circuit Judges should be prohibited from carrying out the effect of General Order No. 5 since Florida Rule 1.035 (b) and (c) of the Florida Rules of Civil Procedure and Rule 3.025(c) of the Florida Rules of Criminal Procedure do not vest such authority in the Honorable Judges of the Circuit Court In And For The Eleventh Judicial Circuit.

WHEREFORE, petitioners pray that this Court issue a rule directing the Honorable Circuit Judges to show cause why the Writ prayed for should not be issued.

Respectfully submitted,

PODHURST, ORSECK &
PARKS, P.A.
66 West Flagler Street,
Miami, Florida 33130
Attorneys for Petitioners, The
Court Reporters of Dade County

By: /s/ Aaron Podhurst
AARON PODHURST

## APPENDIX O

[TITLE OMITTED]

## NOTICE OF APPEAL

The petitioners, the Court Reporters of Dade County, take and enter their appeal to the District Court of Appeal of Florida, Third District, to review General Order No. 5 of the Circuit Court of the Eleventh Judicial Circuit In And For Dade County, Florida, in case no. 74-1, In Re: Modification Of Uniform Court Reporting Fees, bearing date the 2nd day of July, 1974, and signed and rendered on that date.

The nature of the order appealed from is General Order No. 5 governing the payment of court reporters' services performed in all civil and criminal proceedings, including depositions, in the Circuit Court of the Eleventh Judicial Circuit and the County Court of Dade County.

All parties to said cause are called upon to take notice of the entry of this appeal. Dated this 27 day of July, 1974.

Respectfully submitted,

PODHURST, ORSECK &
PARKS, P.A.
Attorneys for Petitioners, the
Court Reporters of Dade County

By /s/ Aaron Podhurst

AARON PODHURST



## APPENDIX P

[TITLE OMITTED]

## ASSIGNMENTS OF ERROR

COME NOW the petitioners, the Court Reporters of Dade County, and assign the following as error, to be relied upon in the Third District Court of Appeal for reversal of the General Order No. 5 of July 2, 1974:

1) The trial court erred in entering the General Order No. 5 of July 2, 1974.

2) The trial court erred in including within the ambit of the Order depositions in litigation.

Respectfully submitted,

PODHURST, ORSECK &
PARKS, P.A.
Attorneys for Petitioners, the
Court Reporters of Dade County

By /s/ Aaron Podhurst

AARON PODHURST

WE HEREBY CERTIFY that a true copy of the foregoing was mailed this 28 day of July, 1974 to the following:

The Honorable Grady L. Crawford
Chief Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

The Honorable Francis J. Christie, Chairman
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

The Honorable William A. Herin
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

The Honorable Joseph Nesbitt
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

The Honorable Boyce F. Ezell, Jr.
Judge, Dade County Circuit Court
Dade County Courthouse
Miami, Florida

Alan T. Dimond, Esquire
Assistant County Attorney
1626 Dade County Courthouse
Miami, Florida 33130

Darrey A. Davis, Commissioner
McCarthy, Steel, Hector & Davis
First National Bank Building
Miami, Florida

Wilbur McDuff
Court Administrator
Dade County Courthouse
Miami, Florida

By /s/ Aaron Podhurst
AARON PODHURST



## APPENDIX Q

[TITLE OMITTED]

## GENERAL ORDER NO. 5

PURSUANT TO the authority vested in the majority of the Judges of the Circuit Court of the Eleventh Judicial Circuit of Florida under Rule 1.035 (b) and (c) of the Florida Rules of Civil Procedure and Rule 3.025 (c) of the Florida Rules of Criminal Procedure, General Order No. 4 is amended, and the following court reporting fees are hereby adopted and shall govern the payment of court reporter services performed in all civil and criminal proceedings, including depositions, in the Circuit Court of the Eleventh Judicial Circuit and the County Court of Dade County:

Schedule of Fees of Court Reporters

ATTENDANCE

| | |
|---|---|
| Morning session (morning session to be from 9:00 a.m. to 12:30 p.m.) | $30.00 |
| Afternoon session (afternoon session to be from 12:30 p.m. to 5:30 p.m.) | $30.00 |
| After five hours | $12.00 per hr. |
| Before 9:00 a.m. or after 5:30 p.m. | $12.00 per hr. |

ORDINARY TRANSCRIPTS

Original page only ..... $ 2.00

Original page and one carbon copy ..... $ 2.00

Each additional carbon copy per page ..... $ .75

The term ordinary transcript is defined as that in which a transcript of the original shorthand notes or other original records is prepared by the reporter during the normal course of business without any unusual sense of urgency.

The term page of transcript is defined as 25 lines written on paper 8-½ inches by 13 inches or 8-½ inches by 11 inches in size, prepared for binding at the top or on the left side with 1-¾ inch margins, and ⅜ inch margins on the right side. Typing shall be 10 letters to the inch.

Payment from County funds will not be approved or authorized for expedited charges for court reporting services rendered in any court in said Circuit.

APPROVED AND ADOPTED by the undersigned, who constitute a majority of the Circuit Judges of the Eleventh Judicial Circuit of Florida, this 2nd day of July, 1974.

/s/ Grady L. Crawford

GRADY L. CRAWFORD
Chief Judge



/s/ William A. Herin

WILLIAM A. HERIN

HAROLD R. VANN

/s/ Francis J. Christie

FRANCIS J. CHRISTIE

GEORGE E. SCHULZ

JAMES W. KEHOE

/s/ Harvie S. DuVal

HARVIE S. DU VAL

J. GWYNN PARKER

/s/ Francis X. Knuck

FRANCIS X. KNUCK

/s/ Gene Williams

GENE WILLIAMS

/s/ Raymond G. Nathan

RAYMOND G. NATHAN

JACK A. FALK

/s/ Milton A. Friedman

MILTON A. FRIEDMAN

/s. David Popper

DAVID POPPER

/s/ Shelby Highsmith

SHELBY HIGHSMITH

ARTHUR E. HUTTOE

RHEA PINCUS GROSSMAN

JOSEPH NESBITT

/s/ Thomas A. Testa

THOMAS A. TESTA

/s/ Thomas E. Lee

THOMAS E. LEE

/s/ Sam I. Silver

SAM I. SILVER

/s/ Frank B. Dowling

FRANK B. DOWLING

/s/ John R. Blanton

JOHN R. BLANTON

JACK M. TURNER



/s/ Boyce F. Ezell, Jr.

BOYCE F. EZELL, JR.

JAMES H. EARNEST

JOHN RED LAKE

DONALD E. STONE

/s/ Dixie Herlong Chastain

DIXIE HERLONG CHASTAIN

/s/ Edward S. Klein

EDWARD S. KLEIN

/s/ Sidney M. Weaver

SIDNEY M. WEAVER

/s/ H. Paul Baker

H. PAUL BAKER

/s/ Murray Goodman

MURRAY GOODMAN

/s/ Alfonso C. Sepe

ALFONSO C. SEPE

/s/ Ellen J. Morphonios

ELLEN J. MORPHONIOS

/s/ Ralph B. Ferguson, Jr.

RALPH B. FERGUSON, JR.

/s/ Edward D. Cowart

EDWARD D. COWART

/s/ David Goodhart

DAVID GOODHART

/s/ John Gale

JOHN GALE

/s/ Harold G. Featherstone

HAROLD G. FEATHERSTONE

/s/ Dan Satin

DAN SATIN

/s/ Lewis B. Whitworth

LEWIS B. WHITWORTH

/s/ William E. Gladstone

WILLIAM E. GLADSTONE

/s/ Alan R. Schwartz

ALAN R. SCHWARTZ



STATE OF FLORIDA )
COUNTY OF DADE )

This Copy is a true Copy of the Original on file in this Office. WITNESS my hand and Official Seal, This 3rd day of July A.D., 1974.

RICHARD P. BRINKER
Clerk Circuit Court

By W. Tyminski, D.C.

## APPENDIX R

[TITLE OMITTED]

## REPORT OF COMMISSIONER

This advisory report, findings and recommendations is submitted in accordance with the provisions of the Order Appointing Commissioner entered on March 29, 1974.

Such order appointed the undersigned as Commissioner to conduct a public hearing and take testimony from all interested parties regarding the subject matter (court reporting fees) pursuant to the guidelines recommended by Court Reporting Services Committee, and to submit findings of fact which shall be advisory to the Circuit Judges in the exercise of their authority to set court reporting fees under the applicable procedural rules.

In compliance with the provisions of the Order, Notice of Hearing was issued on April 4, 1974. Copies were furnished by mail to the Chairman and to Counsel for the Committee representing the Court Reporters of Dade County, the County Attorney, the County Manager, each County Commissioner, the State Attorney, the Public Defender, Director of Legal Services of Greater Miami, and the Presidents of all local Bar Associations. Notice of Hearing was published in the Miami Review & Daily Record on April 5, 8, 9 and 10, 1974.

Pursuant to the Notice of Hearing, a public hearing was had on April 26 and May 3, 1974, in Court Room 4-1 of the Dade County Courthouse. All interested parties were



afforded opportunity to be heard. The Court Reporters of Dade County were represented by Aaron S. Podhurst, Esquire. Assistant County Attorney Alan T. Dimond represented the County. The Commissioner wishes to express grateful appreciation for the able presentation of testimony, evidence and argument made by these outstanding advocates on behalf of the interests which they represented.

The transcript of the proceedings at the public hearing is made a part of this report by reference.

### BACKGROUND

Section 29.03, Florida Statutes, enacted June 15, 1953, effective July 1, 1953, provides in pertinent part:

> "29.03. Compensation for Services. — The official circuit court reporter shall be entitled to receive for each day or fraction of a day in which such reporter shall be engaged in reporting testimony and proceedings in any civil case not less than ten ($10.00) dollars a day, nor less than ten ($10.00) dollars in any one case, for each day or fraction of a day in which such reporter shall be engaged; and said reporter shall also, when ordered by either party in a criminal case or by the presiding judge report the arguments of counsel arguing the facts to the jury, and shall receive as compensation therefore not less than ten ($10.00) dollars for reporting each such argument. Such reporter shall receive for each typewritten transcript of his notes of the testimony and proceedings taken at the trial of any civil or criminal

cause, and furnished on demand of either party to the suit for which the testimony and proceedings are taken, the amount of fifty cents per page for the original and the amount of twenty-five cents per page for each carbon copy thereof; and each such transcript page shall consist of not less than twenty-five lines of double-spaced pica typing. Such reporter shall receive the same fees as provided in this section when rendering similar service in criminal or other courts of this state. . . ."

Rule 1.035, Florida Rules of Civil Procedure, provides:

"Rule 1.035. Court Reporter

(a) When Required. Proceedings shall be reported on the request of any party. He shall be responsible for payment of the reporter. The court may order the proceedings reported. Otherwise, reporting of any proceedings shall not be required.

(b) Fees. The judges of a circuit court by majority vote may set the fees to be charged by court reporters by general order. The order shall be uniform in all courts throughout the territorial jurisdiction of the circuit court and shall be recorded.

(c) Record. When proceedings are being reported, no part of the proceedings shall be taken without being reported unless all of the parties agree to do so and the court approves the agreement.



(d) Transcripts. The court may specify the form size, spacing and method of typing transcripts of proceedings by general order. The order shall be recorded."

Rule 3.025, Florida Rules of Criminal Procedure, in pertinent part provides:

"(c) Court Reporters. The fees to be allowed court reporters shall be in the amounts as provided by Rule 1.035, Florida Rules of Civil Procedure."

Reedus v. Friedman, Fla. App. 1973, 287 So.2d 355, holds that, in the absence of a recorded general order of a majority of the Circuit Judges setting the fees to be charged by court reporters, under the provisions of Rule 1.035, supra, the court reporter fees prescribed by Section 29.03, supra, govern.

Pursuant to Rules 1.035 and 3.025(c), supra, the majority of the Judges of the Circuit Court of the Eleventh Judicial Circuit of Florida, on March 14, 1974, entered General Order No. 4, recorded March 19, 1974, in Official Records Book 8620, at Page 1816, adopting court reporting fees governing the payment of court reporter services performed on civil and criminal proceedings, including depositions, in the Circuit and County Courts, as follows:

"Schedule of Fees of Court Reporters

APPEARANCES

Morning session ..... $30.00
(morning session to be from 9:00 a.m.
to 12:30 p.m.)

Afternoon session ..... $30.00
(afternoon session to be from
12:30 p.m. to 5:30 p.m.)

$10.00 per hour after 5:30 p.m.

TRANSCRIPTS

$1.50 per page for the original only
$1.75 per page for the original and one copy
$ .60 per page for each additional copy

Payment from County funds will not be approved or authorized for expedited charges for court reporting services rendered in any court in said Circuit."

On March 27, 1974, a Committee representing the Court Reporters, official and free lance, of Dade County, Florida, petitioned the Circuit Judges for a hearing to present evidence regarding the setting of uniform court reporting fees, alleging:

"The recent order of the Court, in the opinion of the undersigned, does not take into consideration the economic factors pertaining to our profession, and we respectfully request an opportunity to present appropriate testimony and evidence to substantiate the need for increasing the rates established in General Order #4."



The petition for modification was referred to the Court Reporting Services Committee (consisting of five Circuit Judges) with the request to hold a hearing, or in the alternative, to make recommendations as to the procedure for handling the petition. The Committee promptly made the following recommendations:

"1. The Chief Judge promptly appoint a Commissioner to conduct a public hearing and take testimony from all interested parties regarding the above subject matter.

2. That at least twenty days notice be given in the Miami Review to all court reporters, members of the Bench and Bar, County Attorney, State Attorney, Public Defender and all other interested persons of the time, place and purpose of said hearing.

3. All parties be entitled to be represented by counsel at said hearing.

4. It is the feeling of your Committee that testimony presented showing costs and expenses in reporting work must necessarily be accompanied by evidence showing gross and net profit realized from said work in order that the Commissioner may make valid findings of fact.

5. That the recorded proceedings with findings of fact of the Commissioner be reported to this Committee as soon after said hearing is concluded as may be practical. Rule 1.035(b) of the Florida Rules of Civil Procedure promulgated by the Florida Supreme Court authorizes 'the judges of a circuit court by majority vote may set the fees to be charged by court reporters by general order'. This authority of the majority of the circuit judges is non-delegable and the findings of fact to be submitted by the Commissioner therefore, shall be advisory only and not binding upon a majority of the circuit judges when exercising their authority to modify any prior general order setting court reporter fees in the Eleventh Judicial Circuit of Florida.

6. That the general order #4 heretofore promulgated and approved by a majority of the circuit judges of the Eleventh Judicial Circuit in and for Dade County, Florida duly recorded on March 19, 1974 remain in full force and effect until the same be modified if modification be warranted."

Pursuant to the recommendations of the Committee, the Chief Judge entered the Order Appointing Commissioner, under which these proceedings were had.

## ROLE OF COURT REPORTERS IN THE ADMINISTRATION OF JUSTICE

Court Reporters are officers of the court, in that their duties play a vital role in the administration of



justice. Peacock v. State, Fla. App. 1963, 154 So.2d 856. They are charged with the duty of preserving a record of the evidence, and transcribing and certifying the record for use on appeal. International Shoe Company v. Carmichael, Fla. App. 1958, 105 So.2d 389. As officers of the court, Court Reporters are amenable to its processes for failure to perform their duties. Lambert v. State, Fla. App. 1958, 105 So.2d 612.

The competency of Court Reporters is a matter of public interest. Chapter 457, Florida Statutes, Regulation of Shorthand Court Reporting, states that its purpose is "to promote efficiency in court reporting and to extend to the courts and to the public the protection afforded by a standardized profession by establishing a standard of competency for those engaged in it."

Rule 1.035, supra, recognizes the significant role of court reporting services in the administration of justice by vesting the courts with authority to prescribe the fees charged.

Costs of litigation involve court reporting services. It has been held that litigants are under a duty to keep the cost of litigation at a reasonable figure, and the determination of reasonableness is left to the discretion of the trial court. Gordon International Advertising, Inc. v. Charlotte County Land & Title Co., Fla. App. 1964, 170 So.2d 59.

Thus, in recognition of the vital role of Court Reporters in the administration of justice, the reasonableness of fees to be charged by Court Reporters, and the taxable

costs of court reporting services incurred by litigants in a particular case, are matters within the discretion of the courts.

FACTUAL FINDINGS

There are approximately 200 Court Reporters serving in Dade County. It is established by representatives of the Trial Bar, without dissent, that Dade County presently enjoys a high degree of competency and efficiency in available court reporting services, far surpassing the court reporting services in other areas of the State and the Nation.

Through the years, since 1948, the prevailing rates charged by Court Reporters and paid by litigants exceeded the fees prescribed by statute, which has remained at $.50 a page for the original and $.25 a page for each copy, with an attendance fee of ten dollars. Since April, 1973, and until the adoption of General Order No. 4 on March 14, 1974, the prevailing rate was $1.95 per page for the original and one copy, and $.75 per page for each additional copy. An attendance fee of $30.00 was charged for the morning session and $30.00 for the afternoon session of two and one-half hours. After a daily session of five hours (morning and afternoon), an additional attendance fee of $12.00 an hour was charged. These prevailing charges were made by Court Reporters and paid by private litigants by virtue of unilateral action of Court Reporters, without regard to the statute or existing general orders setting Court Reporter's fees.

Notwithstanding these charges made to litigants for court reporting services, the fees charged the County were



based on the amounts prescribed by the general orders promulgated from time to time by the Circuit Judges.

Prior to the hearing, the Committee had 67 Court Reporters deliver to a C.P.A. their 1973 income tax returns. The returns were analyzed and a summary prepared showing the gross revenues, expenses, and net income before taxes as to each of the 67 Court Reporters. A summary of the entire group of Court Reporters also was prepared. This C.P.A. testified at the hearing and the summaries were submitted as evidentiary exhibits. The information concerning the 67 Court Reporters was furnished to the County for review and auditing. The County caused the financial data of 26 Court Reporters, selected at random, to be reviewed and analyzed.

The investigation made by the Committee's C.P.A. showed that the average income of the 67 Court Reporters for 1973 was $15,230.00, before taxes. The County's investigation of the 26 selected Court Reporters showed an average income of approximately $16,500.00, before taxes.

The testimony establishes that a Court Reporter works a minimum of 60 hours a week on the average, with some producing as much as 90 hours a week.

It appears that the cost of materials and supplies used by Court Reporters has increased from 1969 to date between 30 to 50 percent, depending upon the items involved. The largest item, paper, has increased 50 percent. The Committee represented that from January, 1969, to February, 1974, the increase in cost of living has been 38 percent.

The County produced figures showing the increase in the cost of court reporting services paid by the County on a fiscal year basis, as follows:

| | | |
|---|---|---|
| 1969-70 | $475,000.00 | |
| 1970-71 | 725,000.00 | |
| 1971-72 | 837,000.00 | |
| 1972-73 | 914,000.00 | |
| 1973-74 | 1,400,000.00 | (Projected) |

The increasing cost of court reporting services is attributable, in part, to an increasing volume of court reporting services required by County officials and agencies.

Criminal matters account for the greatest portion of the court reporting services paid by the County. Civil litigation involves only 2.15 percent of the County's court reporting costs. The allocation of court reporting costs for the current fiscal year is as follows:

| | |
|---|---|
| Court system (including Legal Aid and Legal Services) | $800,000.00 |
| Public Defender | 400,000.00 |
| State Attorney | 100,000.00 |
| County Attorney | 50,000.00 |
| County Administrative Boards | 50,000.00 |

The record reveals that there have been instances of injudicious use of court reporting services at County expense in the criminal court system, particularly criminal depositions in connection with plea bargaining. Notwithstanding the long standing order that "Payment from County funds will not be approved or authorized for expedited charges for court reporting services in any court,"



Court Reporters frequently are directed to perform expedited services, which are performed and for which they receive no compensation.

## RECOMMENDATIONS

In reviewing the evidence, consideration was given to the propriety of suggesting a differential in court reporting fees for criminal and civil matters; that is, the concept of lower rates for reporting criminal matters. This would tend to alleviate the costs of court reporting imposed on the County. However, it would also inure to the benefit of private criminal litigants. Consideration also was given to the proposition that all court reporting fees, civil and criminal, paid by the County might be set at lower rates. The Court Reporters indicated a willingness to provide court reporting services for the County at reduced rates, on the basis of public service considerations.

Upon reflection, however, the notion of dual schedules for court reporting fees does not necessarily provide a solution to the County's problem of increasing costs for court reporting services. A more judicious utilization of court reporting services paid from County funds would seem to provide a more practical solution. Court Reporters are entitled to fair and reasonable compensation regardless of whether the services are rendered for the benefit of the private sector or public officials and agencies.

Moreover, the language of Section 29.03, Florida Statutes, to the effect that Court Reporters shall receive the same fees for similar services in the civil and criminal courts, raises some doubt or uncertainty as to the propriety or legality of prescribing different rates for criminal and

civil matters. Discrimination in the charges made to the County and to private litigants might possibly engender successful attack.

On the basis of the evidence presented, I find the Court Reporters have demonstrated that an increase in the court reporting fees prescribed by General Order No. 4 is justified. The Court Reporters request basically an increase in the fees for transcripts from $1.50 per page for original only ($1.75 per page for original and one copy) to $2.10 per page for original and one copy, and an increase from $.60 per page for each additional copy to $.80 per page, together with an adjustment of the hours included in the attendance fees.

Recognizing that, as provided by the Order Appointing Commissioner, the authority vested in the Judges of the Circuit Court by majority vote to set the fees of Court Reporters is non-delegable, and that the views of the Commissioner are advisory only, it is with this understanding that a proposed schedule of court reporting fees is respectfully submitted for consideration, with the hope that it may be of some assistance to the Circuit Judges in the exercise of their authority under the rule.

## PROPOSED COURT REPORTER FEES

Attendance:

| | |
|---|---|
| Full morning session | $30.00 |
| Full afternoon session | 30.00 |
| After Five Hours or after 5:30 P.M. | 12.00 per hour |
| Minimum attendance fee | 25.00 |



Transcripts:

| | |
|---|---|
| Original and one carbon copy, per page | $ 2.00 |
| Each additional carbon copy, per page | .75 |

Each transcript page shall consist of not less than twenty-five lines of double-spaced pica typing.

Payment from County funds will not be approved or authorized for expedited charges for court reporting services rendered in connection with any matters or proceedings in this circuit.

Respectfully submitted,

/s/ Darrey A. Davis

DARREY A. DAVIS,
As Commissioner.

Copies furnished to:

Honorable Thomas E. Lee, Jr.
Chief Judge

Honorable Francis J. Christie, Chairman

Honorable William A. Herin

Honorable Grady L. Crawford

Honorable Joseph Nesbitt

Honorable Boyce F. Ezell, Jr.

Circuit Judges Committee to consider
Uniform Court Reporter Fees

Aaron S. Podhurst, Esquire
Attorney for Committee of Court Reporters

Alan T. Dimond, Esquire
Assistant County Attorney



## APPENDIX S

[TITLE OMITTED]

## GENERAL ORDER NO. 4

PURSUANT TO the authority vested in the majority of the Judges of the Circuit Court of the Eleventh Judicial Circuit of Florida under Rule 1.035(b) of the Florida Rules of Civil Procedure and Rule 3.025(c) of the Florida Rules of Criminal Procedure, General Order No. 3 is amended, and the following court reporting fees are hereby adopted and shall govern the payment of court reporter services performed in all civil and criminal proceedings, including depositions, in the Circuit Court of the Eleventh Judicial Circuit and the County Court of Dade County:

Schedule of Fees of Court Reporters

APPEARANCES

Morning session ..... $30.00
(morning session to be from 9:00 a.m. to 12:30 p.m.)

Afternoon session ..... $30.00
(afternoon session to be from 12:30 p.m. to 5:30 p.m.)

$10.00 per hour after 5:30 p.m.

TRANSCRIPTS

$1.50 per page for the original only

$1.75 per page for the original and one copy

$ .60 per page for each additional copy

Payment from County funds will not be approved or authorized for expedited charges for court reporting services rendered in any court in said Circuit.

Supreme Court, U. S.
FILED
OCT 31 1975
MICHAEL RODAK, JR., CLERK

in the

# Supreme Court

of the

# United States

**October Term, 1975**

**CASE No. 75-555**

COURT REPORTERS OF DADE COUNTY,
*Petitioner,*

*vs.*

HONORABLE CIRCUIT JUDGES FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
*Respondent.*

## MEMORANDUM OPPOSING PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF FLORIDA AND THE COURT OF APPEALS, THIRD DISTRICT STATE OF FLORIDA

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CAPITAL PRESS, INC. — MIAMI, FLORIDA

in the

# Supreme Court

of the

# United States

**October Term, 1975**

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**CASE No._____**

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COURT REPORTERS OF DADE COUNTY,
*Petitioner,*

*vs.*

HONORABLE CIRCUIT JUDGES FOR THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, FLORIDA,
*Respondent.*

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## MEMORANDUM OPPOSING PETITION FOR WRIT OF CERTIORARI

Respondent, HONORABLE CIRCUIT COURT JUDGES, represents to the Court as follows:

### A. The Petition is Untimely

The opinion sought to be reviewed was rendered and filed on November 6, 1974 by the District Court of Appeal of Florida, Third District (Petitioner's Appendix L) on December 11, 1974. The District Court of Appeal denied rehearing (Petitioner's Appendix J).

Petitioner seeks this Court's jurisdiction under the auspices of 28 U.S.C.A. Section 1257(3) but did not file a petition until 302 days after the decision sought to be reviewed was rendered by the highest court of the State of Florida in which a decision could be had.

The Supreme Court of Florida in which Petitioner sought jurisdiction did *not* decline to exercise discretionary jurisdiction, but rather twice held it did *not* have jurisdiction (Petitioner's Appendixes E and F). See also *Armstrong v. City of Tampa* (Fla. 1958) 196 So.2d 407.

Under Florida law, the District Court of Appeal is the highest court from which decision could be had, *Williams v. Florida*, 399 U.S. 78, 26 L.Ed.2d 446, 90 S.Ct. 1893 (1970). See also *Amsin v. Thurston* (Fla. 1958) 101 So.2d 808, 810.



The instant Petition was filed on October 9, 1975, more than 180 days since the opinion was rendered and rehearing denied (28 U.S.C.A., Section 2101(c) and Rule 22 of this Court).

Therefore, it appears that Petitioner's Application for a Writ of Certiorari is out of time and should be denied.

### B. Equal Protection is Afforded

1. *Petitioner's Contentions*

Assuming for the sake of argument the Petition is not untimely, there is no issue presented that would warrant this Court's consideration. The gravamen of Petitioner's argument is that the regulation of "the payment of court reporter services performed in all civil and criminal proceedings, including depositions" somehow violates the equal protection provision of the Constitution (Petitioner's Appendix Q). According to Petitioner, the classification is discriminatory, arbitrary and capricious. Court reporters have been selected for regulation, Petitioner contends, rather than people who manufacture the paper or sell typewriters. Other even less compelling examples are cited by Petitioner to show some other class should have been selected for regulation. Then Petitioner argues that there is no rational connection with any state interest. This argument presumes that the state is regulating a business in the "free enterprise system" (court reporting) rather than its court system and the cost to litigants of access to that system.

Further Petitioner argues that:

"Certainly attendance and deposition copies ordered by private agreement between counsel or parties, and a court reporter are not a subject for control by the court and a regulation thus singling out and so regulating court reporters is not constitutionally allowable. The same certainly may be said insofar as the order seeks to regulate fees for depositions not to be filed in the court." (Petition, p. 14)

2. *State's Interest in its Court System*

The State has a keen interest in its court system and in the costs involved in using that system. *Ortwein v. Schwab,* 410 U.S. 656, 35 L.Ed.2d 572, 93 S.Ct. 1172 (1973). The right to set filing fees, even as to indigents, has been affirmed by this court. *United States v. Kras,* 409 U.S. 434, 34 L.Ed.2d 629, 93 S.Ct. 631 (1973). The state has a strong ability to regulate its court system; combined with its power to regulate businesses operating within the state, the burden to overturn such regulation is a heavy one. In *Nebbia v. New York,* 291 U.S. 502, 78 L.Ed. 904, 54 S.Ct. 505 (1934) this Court held that a state did not violate the Fourteenth Amendment when it fixed the minimum and maximum price of milk. The state's interest in its court system is as vital to the public interest as is the supply of milk.

The use of depositions is provided for in Rule 1.280, Florida Rules of Civil Procedure, General Provisions Governing Discovery, which provides in subsection (a) thereof,



"Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination. . . . " Rule 1.300, Florida Rules of Civil Procedure, provides in section (a) that:

> "Depositions may be taken before any notary public or judicial officer or before any officer authorized by the statutes of Florida to take acknowledgments or proof of execution of deeds or by any person appointed by the court in which the action is pending."

The taking of depositions, the use of depositions, and the persons before whom depositions may be taken are integral parts of the Rules of Civil Procedure. Depositions, under Florida law, are evidence to be used in civil cases and are available in criminal proceedings for the purposes of impeachment. Thus, it is clear that the deposition itself plays an integral part in the entire judicial system. On the face of it, without more, it appears reasonable for the Judges of the Circuit Court to regulate the cost of depositions.

However, that contention gains strength when it is remembered that the costs of depositions are a "court cost" that is recoverable by the prevailing party in either civil or criminal proceedings. Section 57.071, Florida Statutes. In fact, it is specifically provided in Rule 1.310(f)(2), Florida Rules of Civil Procedure, that: "Upon payment of reasonable charges therefor the officer shall furnish a copy of the deposition to any party or to the deponent." Thus, the Florida Statutes and Florida Rules of Civil Procedure specifically require that "reasonable charge" be paid for the

cost of a deposition. Obviously, the Statute and the Rule are interpreted and enforced by the Judges of the Circuit Court, as are all the other laws relating to discovery proceedings.

It is important to point out that depositions as a "product" are not intended to be used for purposes other than court proceedings. General Order No. 5 provides that: "the following court reporter fees are hereby adopted and shall govern the payment of court reporters' services performed *in all civil and criminal proceedings.*" Accordingly, it is not the intent of General Order No. 5 to cover depositions taken in administrative hearings or for any other private purpose but rather the Order pertains only to "civil and criminal proceedings." Those same proceedings are the subject matter of Rule 1.310 with regard to the "reasonable charges therefor" and of Florida Statute 57.071.

Clearly, the use of depositions is as much an integral part of the judicial process as is the use of testimony at trial. Any difference between the two is merely academic insofar as the judicial proceedings are concerned. As a matter of fact, depositions are frequently used in the place of testimony before a court and submitted directly into evidence for that purpose. Thus, in those instances, the use of a deposition is identical in all respects to the transcript of proceedings in the court.

3. *Achievement of a Permissible State Objective*

This court held in *Rinaldi v. Yeager,* 384 U.S. 305, 16 L.Ed.2d 577, 86 S.Ct. 1497 (1966) that legislation may



impose special burdens upon defined classes in order to achieve permissible ends. The traditional test for a denial of equal protection under state law is whether the challenged classification rests on grounds wholly irrelevant to the achievement of a valid state objective. *Turner v. Fouche,* 396 U.S. 346, 24 L.Ed.2d 567, 90 S.Ct. 532 (1970). The order here applies equally to all persons within the class by regulating official and free-lance court reporters. The choice of classification is up to the regulating authority and the Florida court system is entitled to great latitude in making classifications, *Levy v. Louisiana,* 391 U.S. 68, 20 L.Ed.2d 436, 88 S.Ct. 1509 (1968). The object here is clearly to control the cost of litigation which is a laudable objective wholly within the framework of proper court management. Moreover, there is no suspect classification such as race present.

The inferred aim of the Court Reporters in challenging this fee setting Order is to be able to sell transcripts and depositions for whatever the market can bear. It is reasonable for the State to keep a "supply and demand" economy out of its court system. Setting reasonable and uniform rates serves to keep the court system within the reach of her citizens, rich or poor.

## C. Conclusion

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,
GREENBERG, TRAURIG,
HOFFMAN, LIPOFF &
QUENTEL, P.A.

By /s/ Alan T. Dimond

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## CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that three true copies of the foregoing Memorandum Opposing Petition for Writ of Certiorari have been mailed to ROBERT ORSECK, ESQ., Podhurst, Orseck & Parks, P.A., 1201 City National Bank Building, 25 West Flagler Street, Miami, Florida 33130, this 29 day of October, 1975, in accordance with Rule 33 of this Court.

GREENBERG, TRAURIG,
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